

COPY

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

THE BURLINGTON NORTHERN and)
SANTA FE RAILWAY COMPANY, and)
CITY OF EARLVILLE, LaSALLE COUNTY,)
ILLINOIS,)

Petitioners,)

v.)

STATE OF ILLINOIS, DEPARTMENT)
OF TRANSPORTATION)

Respondent.)

Petition seeking an order from the Illinois)
Commerce Commission authorizing permanent)
closure and removal of the grade crossing located)
at the intersection of Ottawa Street, in the City of)
Earlville, LaSalle County, Illinois and the trackage)
of The Burlington Northern and Santa Fe Railway)
Company at milepost 72.14, DOT No. 079 627H.)

Toz-0063

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Illinois Commerce Commission
RAIL SAFETY SECTION

AMENDED JOINT PETITION

Now come joint petitioners, The Burlington Northern and Santa Fe Railway Company ("BNSF"), by its attorneys, Kenneth J. Wysoglad & Associates and City of Earlville, LaSalle County, Illinois and for their Amended Joint Petition to the Illinois Commerce Commission states as follows:

1. Petitioner, BNSF is a Delaware corporation authorized to transaction business in the State of Illinois and operates a common carrier service by railroad in interstate and intrastate commerce with certain trackage and other facilities located throughout the State of Illinois, including the City of Earlville, LaSalle County, Illinois.
2. Petitioner, City of Earlville, LaSalle County, Illinois ("City") is an Illinois municipal corporation.
3. Ottawa Street is a north/south roadway located within the geographic

DOCKETED


boundaries of the City and is under the jurisdiction of City.


4. BNSF operates certain railroad trackage extending in a generally east to west direction through City.
5. Ottawa Street traverses the trackage of BNSF by virtue of an at grade crossing located at milepost 72.14, DOT No. 079 627YH.
6. BNSF and City recommend and request that the at grade crossing at Ottawa Street and the tracks of BNSF, milepost 72.14, DOT No. 079 627H be permanently closed, the at grade crossing and warning devices removed and the roadway barricaded as the public convenience and necessity no longer require the existence of the aforesaid at grade crossing and public safety would be enhanced with the closure of the aforesaid at grade crossing.
7. City requests incentive compensation in the amount of \$30,000 from the Illinois Commerce Commission ("ICC") in accordance with the policy of the ICC as incentive for the voluntary closure of the Ottawa Street at grade crossing.
8. The City, in accordance with all legal requirements, has passed its ordinance and resolution vacating Ottawa Street on both sides and over the subject at grade crossing at milepost 72.14, DOT No. 079 627H. Attached hereto, marked Exhibit 1 and made a part hereof is a true and correct copy of City's resolution and/or ordinance vacating the subject roadway at the aforescribed location. As City, a public highway authority in interest, has vacated Ottawa Street on both sides of and across the at grade crossing location, Joint Petitioners believe that the provision of 625 ILCS 5/18c-

7401(3) have been met and the grade crossing can be closed, barricaded and removed without further order of the Illinois Commerce Commission. However, to the extent a determination and order is required from the Illinois Commerce Commission as to the closure and/or award of incentive compensation then Joint Petitioners herein request the Illinois Commerce Commission enter an order permanently closing and abolishing the grade crossing at the intersection of Ottawa Street and the trackage of BNSF, milepost 72.14, DOT No. 079 627H and award incentive compensation in accordance with the policy of the ICC.

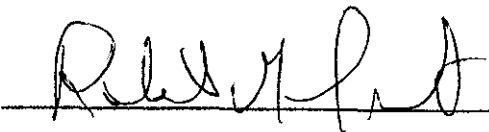
Wherefore, Joint Petitioners, The Burlington Northern and Santa Fe Railway Company and City of Earlville, LaSalle County, Illinois request the Illinois Commerce Commission, if it deems necessary, set the aforesaid matter for hearing and to the extent required by law enter an order abolishing and permanently closing the at grade crossing located at the intersection of vacated Ottawa Street and the trackage of BNSF at milepost 72.14, DOT No. 079 627H, award incentive compensation for the voluntary closure of the subject at grade crossing and such other relief as the Illinois Commerce Commission deems just and appropriate.

THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

By: 

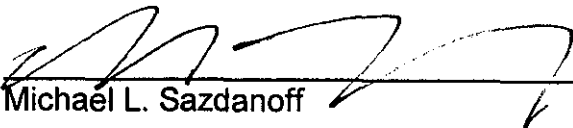
Title: 

CITY OF EARLVILLE, LaSALLE COUNTY,
ILLINOIS

By: 

Title: MAYOR

KENNETH J. WYSOGLAD & ASSOCIATES


Michael L. Sazdanoff

Michael L. Sazdanoff
Kenneth J. Wysoglad & Associates
Attorneys for Petitioner
The Burlington Northern and Santa Fe Railway Company
118 S. Clinton Street, Suite 700
Chicago, Illinois 60661
(312) 441-0333

ORDINANCE 4-29-02

AN ORDINANCE VACATING A STREET AT THE OTTAWA STREET
CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
IN THE CITY OF EARLVILLE, ILLINOIS

WHEREAS, the City of Earlville has determined that the public interest will be served by vacating a portion of Ottawa Street at the point that such street is crossed by the Burlington Northern and Santa Fe Railway, such intersection being:

the intersection of Burlington Northern and Santa Fe Railway's trackage and Ottawa Street, mile post 72.14, DOT No. 079627H.

WHEREAS, the City of Earlville has determined the statutorily dedicated portion of Ottawa Street serves no current or future public purpose and is currently a hazard to public health and safety;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EARLVILLE, LASALLE COUNTY, ILLINOIS AS FOLLOWS:

1. That the recitals contained in the preamble to this Ordinance are incorporated by reference as if set out in full herein.

2. That the City of Earlville shall, and hereby does, vacate:

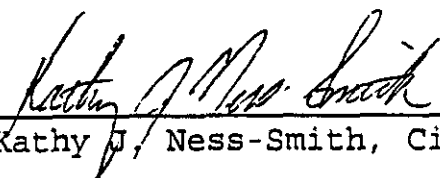
the intersection of Burlington Northern and Santa Fe Railway's trackage and Ottawa Street, mile post 72.14, DOT No. 079627H.

3. That the ownership of the property vacated by virtue of this Ordinance shall be vested in the adjoining property owner, Burlington Northern and Santa Fe Railway Company, pursuant to the provisions of Section 11-91-1 of the Illinois Municipal Code (65 ILCS 5/11-91-1), subject to the Burlington Northern and Santa Fe Railway reimbursing the City of Earlville for the publication costs incurred in publishing the public notice of the street vacation hearing, reimbursing the City of Earlville for the fee associated with the preparation of any

STATE OF ILLINOIS)
)
COUNTY OF LASALLE)ss:
)
CITY OF EARLVILLE)

I, KATHY J. NESS-SMITH, City Clerk of the City of Earlville, in and for said County, in the State aforesaid, and keeper of the records, files and seal thereof, do hereby certify that the annexed instrument in writing is a true copy of the City Council Meeting Minutes, filed of record in said City, on the 29th day of April, 2002, as appears from the Records and Files of said City in my office.

GIVEN under my hand and seal of said City this 8th day of May, 2002.



Kathy J. Ness-Smith, City Clerk

(SEAL)

CITY OF EARLVILLE
RECESSED SESSION APRIL 29, 2002

Mayor Robert Smith called the City Council meeting to order at 7:00 P.M. The following members were present: Alderman Skip Osborne, Alderman Bonine, Alderman Mills, Alderman Steve Osborne, Alderman Busen, and Alderman Cwikla. Also present were City Clerk Kathy Smith, and City Attorney Kyle Stephens.

Visitors at the meeting were AEA Representative Andy Washelesky, Jim Vohs, Gene Coppes, Ron Bond and a McMahon Assoc. Inc. representative Tim Bronn.

ADDITIONAL AGENDA

None

PUBLIC VOICE

None

PUBLIC HEALTH & SAFETY

Alderman Bonine reported:

- Pressure will be put on Mr. Stockley the first of next month regarding the Strong Building. There is an interested party wanting to purchase it, however there are legal and insurance issues.

FINANCE

Alderman Skip Osborne reported:

- With the new state budget cuts the City has been notified they will be cut \$15,000.00, which is approximately an \$8.00 per person tax cut.

A motion was made by Alderman Skip Osborne and seconded by Alderman Cwikla that the bills be paid. All in favor by voice vote. Motion carried.

A motion was made by Alderman Skip Osborne and seconded by Alderman Mills to amend to Appropriation Ordinance 07-11-2001 making the line item transfers, within the same funds, listed below. On roll call. Motion carried.

Transfer \$ 55.00	from:	STREET SUPPLIES - Small Tools	01-500-50-5540
	to:	STREET SUPPLIES - Other	01-500-50-5530
Transfer \$ 1,520.00	from:	TIF I SERVICES - Legal	31-000-30-5365
	to:	TIF I SERVICES - Contract	31-000-30-5310
Transfer \$ 635.00	from:	WATER SERVICES - Rental of Equip.	51-530-30-5385
	to:	WATER SERVICES - Testing	51-530-30-5390
Transfer \$ 2,850.00	from:	WATER CAP.OUT. - Other Improve.	51-530-60-5650
	to:	WATER Inter-fund Operating Transfer	51-530-90-5920
Transfer \$10,750.00	from:	SEWER REPAIRS - Utility System	52-540-20-5220
	to:	SEWER SERVICES - Engineering	52-540-30-5325
Transfer \$ 1,130.00	from:	SEWER CAP.OUT - Other Improve.	52-540-60-5650
	to:	SEWER Interest Payment	52-540-70-5710

- Sewer Operator, Jim Vohs, asked why the city is willing to pay engineering fees again, when they have already had a plan permitted.
- Alderman Bonine asked Tim Bronn to respond to this, in which he talked about doing an amendment. They are building an oxidation ditch, not a packaging plant. Construction documents need to be put together and a whole new set of plans need to be drawn up, etc.
- Jim stated he understood that, however that is not what he meant. He asked why, when the city has something that they already paid for, are they changing gears any paying to start all over again?
- No response was made.
- Mayor Smith pointed out that the proposal states that this is an estimate and is not cast in stone.

After discussion; On roll call, motion carried.

EXECUTIVE SESSION

None

REGULAR SESSION

A motion to adjourn the meeting at 7:30 p.m. was made by Alderman Mills and seconded by Alderman Skip Osborne. All in favor by voice vote.

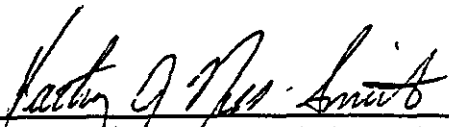


City Clerk
Kathy Smith

STATE OF ILLINOIS)
)
COUNTY OF LASALLE)ss:
)
CITY OF EARLVILLE)

I, KATHY J. NESS-SMITH, City Clerk of the City of Earlville, in and for said County, in the State aforesaid, and keeper of the records, files and seal thereof, do hereby certify that the annexed instrument in writing is a true copy of the Public Hearing Minutes, filed of record in said City, on the 29th day of April, 2002, as appears from the Records and Files of said City in my office.

GIVEN under my hand and seal of said City this 8th day of May, 2002.



Kathy J. Ness-Smith, City Clerk

(SEAL)

**CITY OF EARLVILLE
PUBLIC HEARING APRIL 29, 2002**

Mayor Robert Smith called the City Council Public Hearing at 6:45 P.M. The following members were present: Alderman Cwikla, Alderman Skip Osborne, Alderman Bonine, and Alderman Mills. Alderman Busen and Alderman Steve Osborne were absent. Also present were City Clerk Kathy Smith, and City Attorney Kyle Stephens.

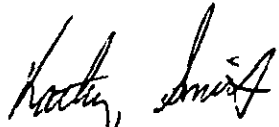
The Notice read as:

Notice is hereby given that a public hearing shall be held by the Mayor and City Council of the City of Earlville On April 29, 2002 at 6:45 pm at City Hall, 210 W. Railroad Street, Earlville Illinois to consider a proposed Ordinance pursuant to 65 ILCS 5/11-9-1, vacating a portion of the public road known as Ottawa Street at the point that such street is crossed by the Burlington Northern and Santa Fe Railway.

All interested parties may appear at such hearing and be given an opportunity to be heard.

There was no one present with any objections.

A motion was made by Alderman Mills and seconded by Alderman Cwikla to close the session at 6.55 P.M. By voice vote. Motion carried.



City Clerk
Kathy Smith

STATE OF MISSOURI)
) SS
COUNTY OF GREENE)

VERIFICATION

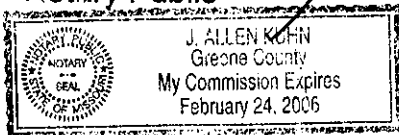
Cheryl Townlian, being first duly sworn deposes and states that she is Manager, Public Projects for The Burlington Northern and Santa Fe Railway Company, Joint Petitioner herein. That she is duly authorized by said railroad company to sign, verify and file the foregoing Amended Joint Petition and that the matters set forth in said Amended Joint Petition are true and correct to the best of her knowledge, information and belief.

Cheryl Townlian

Subscribed and sworn to

before me this 2ND day of
July, 2002

J. Allen Kohn
Notary Public



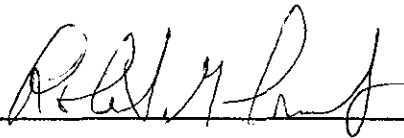
STATE OF ILLINOIS)
) SS
COUNTY OF LaSALLE)

VERIFICATION

I, ROBERT G. SMITH

being first duly sworn on oath, deposes and states that he is _____

MAYOR of the City of Earlville, LaSalle County,
Illinois, that he is duly authorized to sign, verify and file the foregoing Amended Joint
Petition and that the matters set forth in said petition are true and correct to the best of his
knowledge, information and belief.



Subscribed and sworn to

before me this 11th day of

July, 2002

Martha E. Dankenbring
Notary Public

